Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board, which was and is: 1303 S. Acacia Street, Compton, CA 90220.

- 4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.
  - 5. Government Code section 11506 states, in pertinent part:
  - (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.
- 6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 2011-782.
  - 7. California Government Code section 11520 states, in pertinent part:
  - (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.
- 8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2011-782, finds that the charges and allegations in Accusation No. 2011-782, are separately and severally, found to be true and correct by clear and convincing evidence.
- 9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement of this matter are \$2,305.00 as of April 20, 2011.

## **DETERMINATION OF ISSUES**

- 1. Based on the foregoing findings of fact, Respondent has subjected his Registered Nurse License (No. RN 376716) to discipline.
  - 2. The agency has jurisdiction to adjudicate this case by default.
- 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation, which are supported by the evidence contained in the Default Decision Evidence Packet in this case:
  - a. Business and Professions Code sections 2761, subdivision (f) and 490 (Conviction of Substantially Related Crimes.)
  - b. Business and Professions Code sections 2761, subdivision (a) and 2762, subdivision(b) (Dangerous Use of Alcohol.)
  - c. Business and Professions Code sections 2761, subdivision (a) and 2762, subdivision(c). (Convictions Involving the Consumption of Alcohol.)

## **ORDER**

IT IS SO ORDERED that Registered Nurse License No. RN 376716, heretofore issued to Respondent Roy Gregory Brooks, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on \_

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It is so ORDERED

Glannine K

FOR THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS

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DOJ Matter ID:LA2010600993

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Attachment: Exhibit A: Accusation

Exhibit A

Accusation

1 2 3 4 5 6 7 8 9	EDMUND G. BROWN JR. Attorney General of California KAREN B. CHAPPELLE Supervising Deputy Attorney General THOMAS L. RINALDI Deputy Attorney General State Bar No. 206911 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-2520 Facsimile: (213) 897-2804  Attorneys for Complainant  BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS
10	STATE OF CALIFORNIA
11	In the Matter of the Accusation Against: Case No. 2011- 782
12	ROY GREGORY BROOKS 1303 S. Acacia Street  ACCUSATION
13	Compton, CA 90220
14	Registered Nurse License No. 376716
15	Respondent.
16 17	Complainant alleges:
18	PARTIES
19	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20	official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21	Consumer Affairs.
22	2. On or about August 31, 1984, the Board of Registered Nursing (Board) issued
23	Registered Nurse License No. RN 376716 to Roy Gregory Brooks (Respondent). The Registered
24	Nurse License was in full force and effect at all times relevant to the charges brought herein and
25	will expire on November 30, 2011, unless renewed.
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### JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

## STATUTORY PROVISIONS

- 4. Section 490 states, in pertinent part:
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- "(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."
- 5. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
  - 6. Section 2761 states, in pertinent part:
- "The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:
  - "(a) Unprofessional conduct, which includes, but is not limited to, the following:

. . . .

- "(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."
  - 7. Section 2762, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

. . . .

- "(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."
- 8. Section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

## REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1444 states, in pertinent part:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

### **COST RECOVERY**

10. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## FIRST CAUSE FOR DISCIPLINE

## (Conviction of Substantially Related Crimes)

- 11. Respondent is subject to disciplinary action under section 2761, subdivision (f) and 490, as defined in California Code of Regulations, title 16, section 1444, in that Respondent has been convicted of crimes substantially related to the qualifications, functions or duties of a registered nurse as follows:
- a. On or about January 29, 2010, Respondent pled nolo contendre to one misdemeanor count of violating Vehicle Code 23152, subdivision (B) [driving while having 0.08% and more, by weight, of alcohol in blood] and one misdemeanor count of violating Vehicle Code section 14601.1, subdivision (a) [driving with a suspended license] in a criminal proceeding entitled *The People of the State of California v. Roy Gregory Brooks* (Super. Ct. Los Angeles County, 2010, Case No. 9LT00565). The circumstances underlying the conviction are that on or about February 28, 2009, Long Beach police officers responded to the scene of an accident where Respondent was observed to have slurred speech, bloodshot eyes, and the odor of alcohol on his breath. Respondent was subsequently arrested and during the booking procedure, he submitted to a breath test that revealed a blood-alcohol content level of 0.21%.
- b. On or about December 17, 2001, Respondent pled guilty to one misdemeanor count of violating Vehicle Code section 23152, subdivision (A) [driving under the influence of alcohol or drugs] in a criminal proceeding entitled *The People of the State of California v. Roy Gregory Brooks* (Super. Ct. Orange County, 2001, Case No. 01HM09285). The circumstances surrounding the conviction are that on or about November 17, 2001, during a traffic enforcement stop, Respondent was found to be driving under the influence of alcohol and arrested. During the subsequent booking procedure, Respondent's blood alcohol content was determined to be 0.23%.

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## SECOND CAUSE FOR DISCIPLINE

## (Dangerous Use of Alcohol)

Complainant refers to, and by this reference incorporates, the allegations set forth 12. above in paragraph 11 as though set forth fully. Respondent is subject to disciplinary action under section 2761, subdivision (a), as defined in section 2762, subdivision (b), in that Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to himself, and the public, as further described in paragraph no. 11.

## THIRD CAUSE FOR DISCIPLINE

## (Convictions Involving the Consumption of Alcohol)

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 11 as though set forth fully. Respondent is subject to disciplinary action under section 2761, subdivision (a), as defined in section 2762, subdivision (c), in that on or about January 29, 2010 and December 17, 2001, Respondent was convicted of crimes involving the consumption of alcohol as further described in paragraph no. 11.

#### **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

- Revoking or suspending Registered Nurse License Number 376716, issued to Roy 1. Gregory Brooks.
- 2. Ordering Roy Gregory Brooks to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
  - 3. Taking such other and further action as deemed necessary and proper.

DATED:

**Executive Officer** 

Board of Registered Nursing

Department of Consumer Affairs

State of California

Complainant

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